

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
January 23, 2003

STATE EMPLOYMENT
RELATIONS BOARD

2003 JAN 24 A 10:19

In the Matter of:

The City of Kettering, Ohio

02-MED-09-0⁸⁵⁷~~587~~

and

FOP, Ohio Labor Council, Police
Command Officers

REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN

APPEARANCES

For the Employer:

Daniel G. Rosenthal, Attorney
Richard Strader, HR Director
Thomas O. Weghorst, HR Analyst
Jim O'Dell, Police Chief
Stephen L. Hopf, Employee
Benefits Consultant
Jessica Sletten, Legal Asistant

For the Union:

Mark E. Drum, Staff
Representative
Lt. Jim Knickle, Representative
Sergeant Karl Schmidt,
Representative
Sergeant Mark Burian,
Representative

INTRODUCTION

The undersigned was selected by the parties, and was duly appointed by SERB by letter dated November 29, 2002, to serve as Fact-Finder in the matter of the City of Kettering (hereinafter referred to as "Employer") and FOP, Ohio Labor Council, Police Command Officers (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until January 23, 2003. Hearing was held at Kettering, Ohio on January 9, 2003. The Union was represented by Mark E. Drum, Staff Representative, and the City was represented by Daniel G. Rosenthal, Attorney.

FACTUAL BACKGROUND

The City of Kettering is a City located in Southwest, Ohio with a population of 60,589. It is a largely residential community near Dayton. The City employees approximately 400 full time employees, and a large number of part-time and seasonal employees. Among the full time employees, there are five separate bargaining units. Those include, police command officers, police patrol officers, public works, fire dispatch and full-time firefighters and EMS-paramedics. The remaining approximately 185 City employees are unorganized.

The police command officers bargaining unit consists of 16 employees, and includes all Sergeants and Lieutenants. The

Collective Bargaining Agreement between the parties expired on December 31, 2002. The parties have waived any statutory claims concerning the award being effective in the following fiscal year. After a number of negotiation sessions, the parties submitted their remaining disputed bargaining issues to fact finding. All tentative agreements made between the parties are deemed to have been incorporated herein and are adopted as part of the parties' final agreement.

The unresolved issues are as follows:

Article 2 - Fair Share Fees

Article 7 - Wages

Article 7 Section 5 - Uniform Allowance

Article 7 Section 12 - Longevity Pay

Article 10 Section 10 - Sick Leave Conversion

Article 10 Section 14-17 - Health, Life, Dental and Optical
Insurance

Article 17 - Tuition Reimbursement

Article 18 - Waiver

Article 20 - Duration

ISSUES

ARTICLE 2 - FAIR SHARE FEES

Union Position: The Union proposes the inclusion a provision

for the requirement of payment of fair share fees by those members of the bargaining unit who choose not to become members of the Union. According to the Union, of the 16 members of the bargaining unit, there are only two individuals who are not members. These individuals, of course receive all of the same contractual benefits as members and must be represented by the Union. They should therefore pay their fair share in the form of a fair share fee which is currently \$4.00 less than Union dues. Further the comparable bargaining units utilized by the Union overwhelmingly include a fair share fee.

Employer Position: The Employer argues that none of the collective bargaining agreements with any of its five bargaining units includes a fair share fee provision. Although the Employer has a long history of collective bargaining, it has long opposed the infringement on constitutional rights which is inherent in a fair share provision. The fair share provision is also inconsistent with the patrol officers' agreement, and the fair share provision would thus present a new condition for promotion.

Discussion: The arguments for and against fair share fees are ones which present long standing and deep seated philosophical and practical concerns on the part of Unions and Public Employers. On the one hand is the Union's desire to collect fees from all of those who receive the benefits of its representation and who it is obligated to represent, juxtaposed against the Employer's strongly held beliefs that public employees should not be required to pay fees to the Union as a

condition of public employment. These two points of view can never be satisfactorily reconciled.

In this case, the Fact-Finder is required to look to a number of factors in making a recommendation, including comparable bargaining units as well as to the collective bargaining history of the parties. While, as the Union notes, many comparable bargaining units across the State of Ohio do include fair share language, the long standing record of collective bargaining agreements between this Employer and its five bargaining units excludes the language. None of those agreements contains the language proposed by the Union, and its inclusion would constitute a significant departure from the historic exclusion of the fair share requirement.

Recommendation:

Current Language.

ARTICLE 7 - WAGES

Union Position: The Union does not seek a specific wage increase, but instead proposes that wages for the command officers be based upon a percentage differential between the patrol officer and command officer pay rates. This proposed differential would be phased in over the course of the Collective Bargaining Agreement so that by the third year of the Agreement, the differential between patrol and Sergeant would be 15%, and the differential between Sergeant and Lieutenant would be 12%. This would restore the command officers to the differential which

they enjoyed in 1980, which has been eroded over time. This erosion in differential has resulted in a reduced number of eligible candidates applying for promotional opportunities. The increase in differential would also restore the command officers to the same ranking in pay state wide as the patrol officers, that being second in the state.

Employer Position: The Employer argues that the command officers are among the highest paid employees in the City because although exempt, they still receive overtime compensation. Because of this overtime compensation, they often earn more than the higher ranking Captain in a given year and have in the past earned more than the Chief. Further, when surveying jurisdictions of comparable size within the Employer labor market and of comparable size statewide to the Employer rather than the top paid 15% in the State as used by the Union, it is clear that the command officers rank at or near the top. The Employer has already provided its non-union employees a 3% raise, and proposes a 2.5% increase for the command officers.

Discussion: Although the pay differential which the command officers seek was created by the Employer in 1980, that differential was altered to its current percentages sometime in the mid 1980's. Thus, the current differentials have been in effect for approximately 20 years. It is beyond dispute that the command officers are the highest paid pursuant to the Employer's comparables, and are among the highest in the State of Ohio pursuant to the Union's comparables. Further, with available

overtime, they are among the highest paid of the employees of the Employer, and often earn more than higher ranking officers and City Department Heads. Although, as the Union argues, the Employer could simply revamp its pay scales for Department Heads to reconcile this problem, the Fact-Finder is not in a position to make such a recommendation. A recommendation which would encompass such an expectation is therefore not reasonable. Further, although the Union stated that many eligible employees are not applying for promotion due to the current differential, there was no direct evidence that this is the case, and there was no evidence that the Employer has been unable to recruit and retain qualified command officers over the last 20 years.

The Employer has already provided its unorganized employees with a 3% wage increase. It has not expressed any inability to pay the command officers the same rate, but proposes a 2.5% increase simply because they are already well paid. The Fact-Finder can discern no reason why the command officers should receive less than other employees, who it can also be presumed are well paid for their positions.

Recommendation: 3% wage increase in each year of the Agreement. It is recommended that this increase be retroactive to January 1, 2003.

ARTICLE 7, SECTION 5 - UNIFORM ALLOWANCE

Union Position: The Union proposes an increase in the uniform allowance from \$660.00 to \$800.00 per year. The current

amount has been in effect for six years, and simply has become inadequate to pay for uniform replacement and maintenance. When compared to the Union's comparables, the average uniform allowance is \$900.00. Replacement costs alone average \$500.00 per year, and this assumes that a jacket or hat will not need to be replaced which would greatly increase the cost. The current amount is simply inadequate.

Employer Position: The current allowance is adequate to maintain the uniforms. Further, the uniform allowance is in line with the survey data for comparable cities. No increase is warranted.

Discussion: There is no question but that both the costs of uniform replacement and cleaning has increased over the last 6 years. Further, although the Employer argues that its current uniform allowance is in line with comparable cities, in fact only two of the jurisdictions in the Employer's local survey which do not provide all replacement uniforms pay less than the Employer. Of the remaining 5 jurisdictions that provide only an allowance, the amounts range from \$780.00 to \$920.00 per year. The Union's proposed \$800.00, is thus comparable to other local jurisdictions. The same result pertains in the Employer's statewide comparison, where uniform allowances for those jurisdictions not providing replacement uniforms range from a low of \$475.00 to a high of \$1,450.00, with five of the jurisdictions being at the \$1,000.00 or more level. The Union's proposed \$800.00, is thus comparable to both other local and statewide

jurisdictions of similar size.

Recommendation: Increase uniform allowance to \$800.00 per year.

ARTICLE 7, SECTION 12 - LONGEVITY PAY

Union Position: The Union proposes a new provision in the Agreement to compensate employees with a bi-annual lump sum payment representing a percentage of their annual wage ranging from .5 to 2.0% after completion of 5, 10, 15 and 20 years of service. When compared with the top 15% jurisdictions, all but four receive some form of longevity pay.

Employer Position: The Employer argues that longevity pay is simply unnecessary. When compared pursuant to the Employer's comparables, far fewer jurisdictions offer longevity pay. Further, even when longevity pay for those who offer it is figured into the equation, the command officers still rank at or near the top pay for jurisdictions of comparable size both locally and statewide. The payment is simply not justified.

Discussion: Longevity pay has two purposes. To act as an aid in the retention of employees and as a reward to employees for loyal years of service. It is clear that the command officers in general have many years of service, with the average for Sergeant being 17 years and the average for Lieutenant being 25 years. The payment is thus clearly not an incentive for retention of employees, and would thus provide no benefit to the Employer. Its only purpose here would therefore be to serve as

a bonus to the employee for years of service. However, in light of the fact that the command officers are among the top paid among cities of comparable size to the Employer, the payment is not justified.

Recommendation: Current Language.

ARTICLE 10, SECTION 10 - SICK LEAVE CONVERSION

Union Position: The Union proposes an increase in the sick leave conversion pay out upon retirement from 1/3 of accumulated sick leave between 50 and 240 accumulated days to ½ of all accumulated sick leave days without limit. Of the comparable jurisdictions utilized by the Union, only 4 have a lower sick leave payout than the current contractual language and 11 jurisdictions have no limit on the number of accumulated hours which may be paid, although the payouts are at varying rates from 1/4 to ½.

Employer Position: The Union's proposal amounts to an unfunded retirement benefit which is simply unnecessary. The Employer reiterates that these employees are already well compensated and additional retirement payouts are simply unwarranted.

Discussion: The Employer has not provided the Fact-Finder with information regarding the local and statewide comparables of cities of similar size on this particular issue. A review of the Union's comparables of the top paid 15% of cities in Ohio indicates that there is wide variation in both the percentages of

sick days paid as well as the maximum number of hours paid upon retirement. As noted, however, only 4 of the jurisdictions in the Union's survey are below the Employer. The Fact-Finder believes that some increase is warranted, particularly in view of the recommendation concerning insurance below which will result in greater out of pocket expense to employees on a continuing monthly basis. The increase proposed by the Union, however, is beyond that which is offered by any of the comparable jurisdictions presented.

Recommendation: Increase the maximum available days for accumulation to 260.

ARTICLE 10, SECTION 14 - HEALTH INSURANCE

Employer Position: The Employer proposes an employee contribution for insurance in the amount of 10% of the monthly premium. Historically the Employer's employees have not paid any portion of their insurance, but with the escalation in premiums, 16% this year, it is necessary that employees begin to pay a portion of the costs. The Employer urges that this must be a percentage of the premium expense rather than a flat dollar amount because this is necessary in order to give the employees a stake in usage and plan changes as necessary to maintain premium costs. If employees do not feel at risk in their premium increases, there simply is insufficient incentive to be actively involved in plan changes which may involve new products or coverages necessary to maintain costs.

Union Position: The Union acknowledges that the majority of employees must now make some contribution toward insurance, and the Union is willing to agree to some sort of contribution here. The 10% of the premium proposed by the Employer, however is simply too great. Further, the open ended percentage contribution proposed by the Employer puts employees at significant risk without any sort of protective cap. A more reasonable approach would be to require either a flat contribution or an employee contribution based on a percentage of premium increases rather than the total premium. In this way employees still have a stake without assuming as great of a risk.

The Union further proposes the implementation of an optical and dental plan paid fully by the Employer and a payment to employees who have other health insurance coverage through their spouse in the amount of \$200.00 per month. The Union further proposes an increase in the current life insurance coverage from \$35,000.00 to an amount equal to or greater than the employee's annual salary.

Discussion: The comparables offered by the Employer and the Union are dramatically different insofar as they relate to payments by employees for health insurance. Pursuant to the Union's comparables, only 4 jurisdictions require a percentage payment by employees without some sort of cap. However, among the Employer's local comparables, 9 cities require a percentage contribution ranging from 7% to 15%. As noted above, the Fact-Finder believes these comparisons to be more applicable here.

This, together with the fact that the Employer's unorganized employees are already making a 10% premium contribution, warrants a percentage contribution by these employees. However, this being a new expense, the Fact-Finder believes that a requirement that the employees immediately pay a full 10% of premium is unreasonable. The percentage payment should therefore be phased in over the life of the three year Agreement.

The Union has not offered any data on its opt out provision. While employees who opt out of insurance of course result in a savings to the Employer, under the new contribution, there is also a savings to the employee in the amount of 10% of the premium which should serve as sufficient incentive to opt out if the employee's spouse has coverage elsewhere.

The Union has additionally proposed optical and dental insurance coverages. The Employer has not provided comparable data regarding this proposal, however it has provided data indicating that 88% of public employers state wide provide dental coverage, and 58% provide optical coverage. According to the Union's comparable data, all of the top 15% of cities statewide provide dental coverage, while roughly half provide optical coverage. These statistics would indicate that dental coverage has become a standard insurance benefit, while optical has not. That being the case, it is not unreasonable that dental, but not optical coverage be implemented here. As with health insurance, the dental insurance should be subject to a 10% employee contribution. This being a new benefit, however, that

contribution should be implemented in full.

The life insurance benefits provided by employers in the Union's comparables vary widely from \$20,000.00 to \$100,000.00. Nearly half of the cities offer insurance which is less than that of the Employer. There being no clear evidence that this increased benefit is necessary, and dental already being recommended as a new insurance benefit, there does not seem to be an adequate basis for an increase in the life insurance.

Recommendation: Article 10, Section 14 shall be amended to read as follows:

The City shall pay of the cost of health insurance coverage not paid by employees pursuant to this provision. Employees shall pay the following portions of health insurance coverage: 3.5% of premium effective on the effective upon the first premium due date after execution of this Agreement; 7% of the premium effective 12 months after the date referred to above; 10% of the premium effective 24 months after the date referred to above.

A new subsection shall be added as follows:

Dental Insurance: The Employer shall pay 90% of a dental care plan for employees. Employees shall pay 10% of the premium cost for the plan. Every effort will be made to include the following in the plan: 100% coverage for preventative maintenance and cleaning 2 times per year, 80% coverage for restoration and repair, 50% coverage for orthodontics.

It is recommended that the balance of the Section remain unchanged.

ARTICLE 17 - TUITION

Union Position: The Union proposes a change in the language of Article 17 to require the Employer to determine if there are

other sources of funding for tuition in order to prevent denial of tuition reimbursement after the fact in the event that it is determined that the employee did not adequately seek out additional sources of funding.

Employer Position: Tuition reimbursement has never been withdrawn, and it is unreasonable to expect the Employer to seek out sources of funding for the employee as proposed.

Discussion: The Union's proposed language is broader than necessary to resolve the problem which it presents. Since the Union's only concern is the retroactive withdrawal of funding for tuition, the addition of language specific to that problem is more appropriate.

Recommendation: Article 17, Section 2 shall be amended to add the following after the first sentence:

Once the Employer has approved payment for tuition costs, such approval may not be withdrawn.

ARTICLE 18 - WAIVER

Union Position: The Union has proposed language to address the issue of midterm bargaining in order to insure that issues which may arise during the term of the Agreement are still subject to bargaining as set forth in ORC §4117.08.

Employer Position: The Employer objects to the language on two basis. First, the language on its face prohibits the alteration of any alleged past practices which are not

specifically incorporated into the Agreement. Secondly, there is no demonstrated need for the language.

Discussion: The language as proposed by the Union does indeed require negotiation concerning any item which it may argue is a past practice which has not previously been reduced to writing. This language could well create a quagmire. The language as drafted reaches far beyond the articulated purpose for the proposal. Additionally, the purposes in making the proposal as explained at hearing, seem to contradict the last sentence of the Article, the deletion of which the Union has not proposed.

Recommendation: Current Language.

ARTICLE 20 - DURATION

Union Position: The Union proposes the that the expiration date of the Agreement be moved back for a period of 30 days to December 1. This would permit bargaining to commence slightly earlier and help to avoid the holidays when trying to schedule negotiation sessions and fact-finding. It would further help to avoid issues relating to the fiscal year.

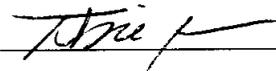
Employer Position: The Employer proposes that the expiration date remain the same. The change is simply unnecessary.

Discussion: The Union's proposal has merit in that it aids in avoiding both fiscal year and holiday scheduling issues. The change does not alter the order in which the Employer's collective bargaining agreements are negotiated, and the Employer

has articulated no strong reason for its opposition to the change.

Recommendation: Change Agreement expiration to December 1.

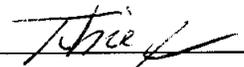
Dated: 1/23/03



Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report was mailed this 23rd day of January, 2003 to Daniel G. Rosenthal, Denlinger, Rosenthal & Greenberg, 2310 Firststar Tower, 425 Walnut Street, Cincinnati, Ohio 45202, counsel for City of Kettering, and to Mark E. Drum, Representative, FOP/ Ohio Labor Council, P.O. Box 136, Delaware, Ohio 43015-0136, by Overnight U.S. mail.



Tobie Braverman

STATE EMPLOYMENT
RELATIONS BOARD

TOBIE BRAVERMAN

ATTORNEY-AT-LAW

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2003 JAN 24 A 10:19

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January 23, 2003

Mr. Daniel G. Rosenthal
Denlinger, Rosenthal &
Greenberg
425 Walnut Street
Cincinnati, OH 45202

Mr. Mark E. Drum
FOP, Ohio Labor Council, Inc.
P.O. Box 136
Delaware, OH 43015-0136

Re: City of Kettering & FOP, Ohio Labor Council, Inc.
Sarb Case # 02-MED-09-0587 My File # 02-425.

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Dear Mr. Rosenthal & Mr. Drum:

Enclosed please find my Fact-Finder Report and Recommendations in the above-referenced matter. Also enclosed is my invoice for services rendered in connection with this matter.

If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

Tobie Braverman

cc: Dale A. Zimmer
Encs.